

Judge Berman

08 CV 3483

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DIVATEX HOME FASHIONS, INC.,

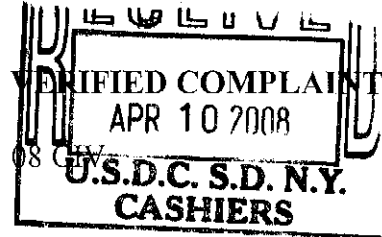
Plaintiff,

-against-

M/V "MAERSK DARMSTADT", her engines
boilers, etc. and
A.P. MOLLER-MAERSK A/S d/b/a
MAERSK LINE

Defendant.

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1. This is a case of contract, cargo damage and non-delivery of cargo, civil and maritime and is an admiralty and maritime claim within the meaning of the Rule 9(h). Plaintiff invokes the maritime procedures specified in Rule 9(h).
2. Plaintiff, DIVATEX HOME FASHIONS, INC., is a legal entity organized under the law, with an office located at 295 Fifth Avenue, New York, New York 10016. Defendant, A.P. MOLLER-MAERSK A/S d/b/a MAERSK LINES, is a legal entity organized under the law, with an agent, Maersk, Inc. located at 2 Giralda Farms, Madison Avenue, Madison, New Jersey 07940.
3. During all times herein mentioned, defendant was the owner and/or operator of the *M/V "MAERSK DARMSTADT"* and operated it in the common carriage of goods of water for hire between Port Qasim and Charleston.
4. The *M/V "MAERSK DARMSTADT"* is now or during the pendency of this action will be, within this District.

5. On or about July 31, 2007, Homecare Textiles delivered a shipment of 1,019 cartons of flannel sheets to defendant, as a common carrier at the Port of Qasim in good condition, for transportation on board the *M/V "MAERSK DARMSTADT"* to Charleston, in consideration of an agreed freight and pursuant to the valid terms and conditions of clean on board bill of lading issued by defendant and the *M/V "MAERSK DARMSTADT"*.
6. Defendant caused said goods, still in good order and condition to be laden on board the *M/V "MAERSK DARMSTADT"*. On or about August 30, 2007, the *M/V "MAERSK DARMSTADT"* arrived at the port of New York and delivered said shipment in a short, slack and damaged condition.
7. Prior to August 30, 2007, plaintiff became for value the owner of said shipment and the owner and holder of said clean on board bill of lading and bring this suit on its own behalf and that of all others interested in said shipment.
8. All conditions precedent required of plaintiff and of all others interested in said shipment have been performed.
9. By reason of the premises, plaintiff and those on whose behalf this suit is brought have sustained damages in the sum of \$10,000.00, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

WHEREFORE, plaintiff prays:

1. That the *M/V "MAERSK DARMSTADT"* be arrested;
2. That process issue against defendant and that defendant be cited to appear and answer the allegations of the Complaint;
3. That an interlocutory judgment be entered in favor of the plaintiff against the *M/V "MAERSK DARMSTADT"*, against defendant directing that the plaintiff recover


its damages and that the *M/V "MAERSK DARMSTADT"*, be condemned and sold and the proceeds of sale be applied to the payment to plaintiff of the sums found due it;

4. That the amount due plaintiff be computed by further proceedings before a Magistrate, pursuant to Rule 53(b) and/or by further proceedings before the Court, pursuant to Rule 42(b);
5. That final judgment against defendant and the *M/V "MAERSK DARMSTADT"*, be entered in favor of the plaintiff for the amount found due plaintiff with interest and with costs; and
6. That plaintiff have such other and further relief as may be just.

Dated: New York, New York
April 8, 2008

McDERMOTT & RADZIK, LLP
Attorneys for Plaintiff

By:



William R. Connor III (WC 4631)
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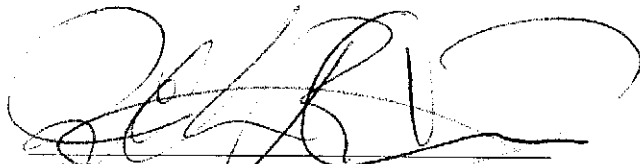
STATE OF NEW YORK)
 : S.S.
COUNTY OF NEW YORK)

WILLIAM R. CONNOR III, being duly sworn, deposes and says:

I am a member of the firm of McDermott & Radzik, LLP. attorneys for the Plaintiff in this action.

I have read the foregoing Verified Complaint, know the contents thereof, and the same is true to the best of my knowledge, information and belief.

The sources of my information and the grounds of my belief are documents in the possession of my firm.



William R. Connor III (WC 4631)

Sworn to before me this
day of April, 2008



Notary Public

MATTHEW T. LOESBERG
Notary Public, State of New York
No. 02106051626
Qualified in New York County
Commission Expires 12-31-2010